IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 757 (SS) of 2006
Old Number
Writ Petition No. 14037 of 1989

Mahabir Singh
S/o Sri Balwant Singh,
R/o Village & P.O. – Imli Khera,
Tehsil –Roorkee,
District – Hardwar. **.....Petitioner.**

Versus

1 District Inspector of Schools, Saharanpur.

2. Committee of Management, National Intermediate College, Dhanauri, Tehsil – Roorkee, District – Haridwar through its Manager.

.....Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sri S.N. Babulkar, Sr. Advocate, assisted by Sri Parikshit Saini, learned counsel for the petitioner, Sri N.P. Shah, learned standing counsel for respondent no. 1 and Sri A.K. Sharma, learned counsel for respondent no. 2.

By means of this writ petition, the petitioner has prayed for the following reliefs:

a. that a suitable writ order or direction in the nature of Mandamus be issued directing the respondents to treat the petitioner as Assistant Teacher in CT Grade in the Institution.

b. that a suitable writ order or direction in the nature of Mandamus be issued directing the respondents to pay to the petitioner the entire salary arrears of salary from May, 1989 till date.

c. that a suitable writ order or direction in the nature of Mandamus be issued directing the respondents to pay salary to the petitioner and other benefits and privileges attached to the post of an Assistant Teacher in CT Grade from month to month onwards.

d. that any other suitable writ order or direction as this Hon'ble court may deem fit and proper under the circumstances of the case be also issued.

e. that costs of this petition be also awarded to the petitioner against the respondents.

The facts of the case as narrated in the writ petition are that one Sri Raj Kumar Chauhan, who was working as Assistant Teacher CT Grade in National Intermediate College, Dhanauri, District – Hardwar (hereinafter referred to as Institution), has tendered his resignation on 01.02.1986 to be effective from 20.05.1986. The Committee of Management vide its resolution dated 22.06.1986 has accepted the resignation of Sri Raj Kumar Chauhan. After resignation of Sri Raj Kumar Chauhan, a substantive vacancy of Assistant Teacher CT Grade arose in the Institution.

In pursuance to the resolution passed by Committee of Management accepting the resignation of Sri Raj Kumar Chauhan, the Committee of Management has issued an advertisement inviting applications for the post of Assistant Teacher in CT Grade in accordance with the procedure prescribed under Regulation 10 Chapter II of the Regulation framed under U.P. Intermediate Education Act.

Vacancy was notified both on the notice board of the Institution as well as in Hindi Newspaper Weekly Vikas which

has wide circulation in the District – Saharanpur (now after creation of State of Uttarakhand, Institution comes within the territorial jurisdiction of State of Uttarakhand). The advertisement was published on 25.05.1987.

In response to the advertisement, number of persons including the petitioners applied for the post and name of petitioner was unanimously recommended by the Selection Committee for the post. Accepting the recommendation of the Selection Committee the committee of Management passed a resolution for appointment of the petitioner and issued appointment letter to the petitioner. However, due to inadvertent mistake of the Committee of Management, in the appointment letter it was stated that petitioner is being appointed against leave vacancy caused due to leave of Sri Raj Kumar Chauhan for the period of 08.07.1987 to 30.04.1988. The said appointment was approved District Inspector of Schools vide order dated 29.07.1987.

Since the resignation of Sri Raj Kumar Chauhan was accepted by Committee of Management vide its resolution dated 22.06.1986 and the acceptance was given effect from 20.05.1986, consequently, there was substantive vacancy in the Institution. There was no occasion for making appointment of the petitioner against the leave vacancy of Sri Raj Kumar Chauhan, who has already resigned long back on 01.02.1986 and the resignation has also been accepted vide resolution dated 22.06.1986. Further mistake was committed by District Inspector of Schools while granting the approval of the petitioner on leave vacancy.

The Committee of Management has filed counter affidavit. Paragraphs 2 and 3 of the counter affidavit are quoted as under:

"2. *That the deponent has considered that matter of the petitioner in depth. He has also gone through the relevant record relating to his appointment. The deponent is satisfied on such perusal of the record that the appointment of the petitioner was made in the leave vacancy caused by Sri Raj Kumar Chauhan as Assistant Teacher in CT Grade in the Institution. The resignation of Sri Chauhan was accepted by the Management through its resolution dated 22.06.1986. Thus, the appointment of the petitioner was made in a substantive vacancy.*

3. *That it was under same misapprehension of the facts that the appointment of the petitioner was purportedly made in the leave vacancy. Since the Management sought approval of the appointment of the petitioner only in the leave vacancy, the District Inspector of Schools granted the approval accordingly, but the facts remained that ever since his appointment, the petitioner has been functioning uninterruptedly in the Institution. The appointment of the petitioner was made in substantive vacancy."*

Thus, from perusal of counter affidavit filed by Committee of Management, it is clear that it was inadvertent mistake on the part of Committee of Management while issuing appointment letter stating therein that petitioner is being appointed against the leave vacancy arising because of leave of

Sri Raj Kumar Chauhan, which is clear from resolution of Committee of Management dated 22.06.1986.

Petitioner's appointment could not have been made against short term vacancy or against leave vacancy after resignation of Raj Kumar Chauhan. There was substantive vacancy of Assistant Teacher CT Grade in the Institution.

Feeling aggrieved with the action of the Committee of Management as well as District Inspector of Schools by treating the petitioner to have been appointed against short term vacancy, petitioner preferred present writ petition in the year 1989 before Allahabad High Court. Division Bench of Allahabad High Court on 13.07.1989 restrained the respondents from interfering with working of the petitioner as Assistant Teacher CT Grade.

Learned counsel for both the parties have submitted that petitioner is continuously working since his date of appointment till date in the Institution.

It is not disputed by the Committee of Management that Sri Raj Kumar Chauhan had resigned from service, his resignation was accepted by the Committee of Management by passing resolution dated 22.06.1986 and after acceptance of resignation of Sri Raj Kumar Chauhan there was no occasion to appoint the petitioner against leave vacancy. The Committee of Management has also accepted this fact that by mistake in the appointment letter petitioner has been given appointment in leave vacancy whereas the petitioner was appointed on substantive vacancy and in accordance with law after following the procedure prescribed under the Regulations.

In the circumstances, writ petition is allowed. The petitioner shall be treated to have been appointed against substantive vacancy. No order as to costs.

(M.M. Ghildiyal, J)

March 22, 2007
Sksharma